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From:

Sent: Monday, August 09, 2010 5:51:48 PM

To:

Cc:

Subject: Third Party Partnership examination question,

You asked whether the Service is legally required to open a partnership audit before making an adjustment to an individual partner's return under certain circumstances. Based on the facts as we understand them, in the case of a partnership that is not subject to TEFRA, the Service is under no legal obligation to conduct an examination of a partnership in order to make an adjustment to an individual partner's return based on information received from third parties as to underreporting on the part of the individual. A Notice of Deficiency can lawfully be based on third party information. If the partnership is subject to TEFRA, any partner adjustment based on third party information must be made according to TEFRA procedures.

Our answer is best explained by way of example.

P, an individual, is a partner in Partnership 1, which makes sales in State X. Partnership 1 is not subject to TEFRA. State X determines that Partnership 1 understated its gross sales for State X and ultimately made adjustments to the State X liability of P. State X informed the Service of the underreporting by P. The Service wants to use the information to assert an additional federal tax liability on P.

You asked whether the adjustment could be made without first opening the Partnership return for federal income tax purposes. The short answer is yes. There is no legal requirement that a federal examination be conducted before the Service proposes an adjustment to the federal tax liability of P. Consistent with other guidance you've received on this program, however, the Service must be prepared to defend the adjustments if challenged.

Please feel free to contact us with further questions.